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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,435	07/18/2003	Thai Huynh-Ba	DCS-9179	4957

34500 7590 06/05/2006

DADE BEHRING INC.  
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EXAMINER

CROSS, LATOYA I

ART UNIT PAPER NUMBER

1743

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/622,435	<b>Applicant(s)</b> HUYNH-BA ET AL.	
	<b>Examiner</b> LaToya C. Younger	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☐ Claim(s) 1-6 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

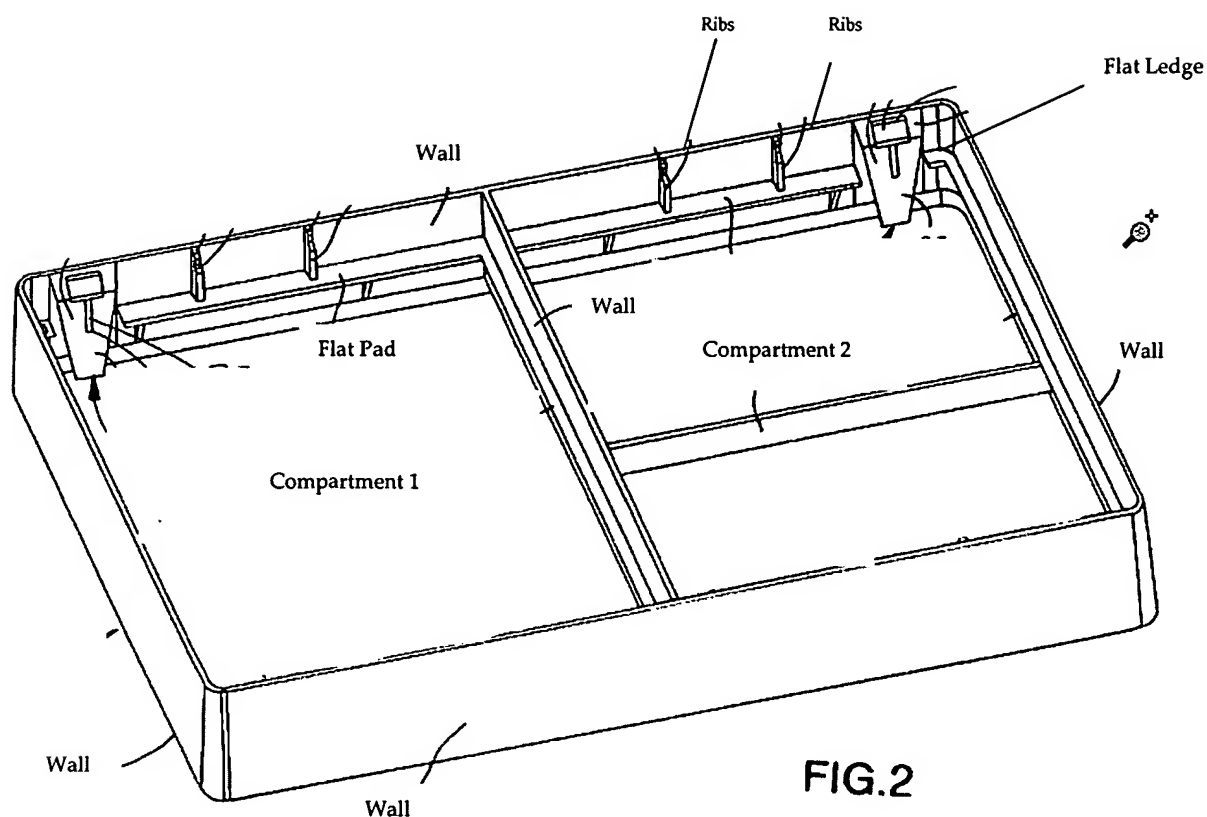
### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 21, 2006 has been entered.

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,098,819 to Link in view of US patent 6,321,609 to Mengel et al.

Link teaches a magazine comprising a rectangular storage area having opposing walls (5, 6) and opposing walls (7, 8). Wall (9), in the middle of the storage area, creates two storage compartments for holding pipette tips. Within each storage compartment, there exist two pairs of ribs (25, 26) which protrude from the walls into the storage compartment. There also exists a "flat pad" and "flat ledge" that protrude into the storage compartment. Link further discloses tabs (15, 16) and hooks (21) that aid in locking one rack of pipette tips to another rack.



Link differs from the instant invention in that there is no disclosure of 1) curved front and back surfaces and 2) a hinged gate. Link further differs in that the locking means are provided on the inside of the magazine, not the outside as claimed.

Mengel et al teach a magazine for holding gas sampling tubes. The magazine (14) has multiple compartments (153) for holding the tubes. Mengel et al teach that the slots are sized corresponding to the sampling tube to be stored. The slots taught by Mengel et al are curved on a front and back side. Mengel et al further teach a door (170) to allow the tubes to pass out of the magazine and into the gas sampling system. The door pivots about a door pin/hinge and it biased closed by a torsion spring (172). See col. 7, line 35 – col. 8, line 6 and figure 6.

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It would have been obvious to one of ordinary skill in the art to use curved walls where the tubes or cuvettes being stored in the magazine are roundly-shaped, so that the tubes have a better fit in the magazine. Further, it would have been obvious to use a hinged door as a means to hold cuvettes inside the magazine or let the cuvettes move out of the magazine. The hinged door provides a mechanically simplistic means, yet effective means for holding cuvettes in their place until they are to be removed. With respect to the locking means being provided on the outside of the magazine, should would have been an obvious modification so that it would be easier for a user to separate two racks manually by lifting the rack and unhooking the tabs.

#### *Response to Arguments*

3. Applicant's arguments filed March 13, 2006 have been fully considered but they are not persuasive. With respect to Applicants' newly entered limitation of "generally rectangular" reaction cuvettes, the Examiner points to MPEP 2144.04, where it is noted that changes in configuration or shape is usually a matter of choice, which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration is significant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 10:30 a.m. - 8:00 p.m. and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lcy



**YELENA GAKH**  
**PRIMARY EXAMINER**